Supreme Court, U.S.
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(2)

No. 99-1190

In The

Supreme Court of the United States

LEE BACA, Sheriff of the County of Los Angeles and successor in office to Sherman Block,

Petitioner,

v.

BEN LEE, et al.,

Respondents.

On Petition For Writ Of Certiorari To The California Court Of Appeal, Second Appellate District, Division One

PETITIONER'S SUPPLEMENTAL BRIEF

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PETITIONER'S SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.8, petitioner Lee Baca hereby submits a supplemental brief to advise the court of an event that occurred after the filing of the Petition for Writ of Certiorari, which is relevant to the issues raised therein.

As set forth in the Petition for Writ of Certiorari, Petitioner seeks review of the California Court of Appeal's published decision holding that California Code of Civil Procedure section 715.050 could validly exempt residential unlawful detainer judgments from the automatic stay of the Bankruptcy Code, 11 U.S.C. § 362. In so doing, the Court of Appeal reversed an order dismissing the action on demurrer, and indicated the trial court should now issue an injunction requiring the Sheriff to enforce writs of possessions in residential unlawful detainer actions and proceed with evictions notwithstanding the filing of a bankruptcy petition by the tenant under 11 U.S.C. § 362. Pet. for Cert., App. p. 9 n.4 (referring to the "permanent injunction that will now be issued in the case").

This is to advise the Court that on remand the trial court, in accordance with the Court of Appeal's directions, has now entered a peremptory writ of mandate and injunction directing petitioner to comply with the provisions of California Code of Civil Procedure section 715.050 and enforce writs of possession in residential unlawful detainer actions notwithstanding the provisions of 11 U.S.C. § 362. The trial court's order, judgment and peremptory writ are set forth in the appendix to this brief. App., pp. 1-10.

As set forth in the discussion of jurisdiction contained in the Petition for Certiorari at pages 2-3, the Court of Appeal's opinion is hence conclusive and final as to the federal issue presented, and the outcome of further proceedings was preordained. Any appeal from the injunction, judgment and peremptory writ would be governed by the doctrine of law of the case with respect to the only issue presented in the action – application of the Supremacy Clause – and summary affirmance inevitable. *Tally v. Ganahl*, 151 Cal. 418, 421, 90 P. 1049 (1907); *United Dredging Co v. Industrial Acc. Com.*, 208 Cal. 705, 712, 284 P. 922 (1930) ("Where a decision upon appeal has been rendered by a District Court of Appeal and the case is returned upon a reversal, and a second appeal comes to this court directly or indirectly or intermediately, for reasons of policy and convenience, this court generally will not inquire into the merits of said first decision, but will regard it as the law of the case".)

Requiring Petitioner to again proceed through the California appellate system, including pro forma review and summary affirmance by the Court of Appeal and rejection of a subsequent petition for review by the California Supreme Court, solely in order to again seek certiorari in this Court, would result in additional delay of a year or more and prolong the uncertainty in an area of important Federal concern. During that time period, Petitioner, and indeed all other Sheriffs in the State of California will be put to the Hobson's choice of either complying with Code of Civil Procedure section 715.050 and facing a possible contempt citation or an action for damages and attorney's fees by a debtor under 11 U.S.C. § 362(h), or instead complying with the automatic stay

and facing a state court lawsuit for damages, injunctive relief and mandate directing compliance with the California statute. Thus, as stated in the Petition, under the decisions of this Court, the opinion of the Court of Appeal is properly before the Court and it is vital that the Court review the decision at this time. (See Petition pp. 2-4.)

Respectfully submitted,

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BEN LEE, APARTMENT ASSOCIATION OF GREATER LOS ANGELES, a corporation; APARTMENT ASSOCIATION of SAN FERNANDO VALLEY/ VENTURA, a corporation; APARTMENT ASSOCIATION of CALIFORNIA SOUTHERN CITIES, a corporation; FOOTHILL APARTMENT ASSOCIATION, a corporation; MINORITY APARTMENT OWNERS ASSOCIATION, a corporation, Petitioners and Plaintiffs, vs. SHERMAN BLOCK, Sheriff of Los Angeles County, California, DOE 1 and DOE 2, Respondents and Defendants.	)	Case No. BC197745 JUDGMENT (Filed Jan. 20, 2000) DATE: January 20, 2000 TIME: 8:30 AM DEPT. 55

The motion of plaintiffs BEN LEE, APARTMENT ASSOCIATION of GREATER LOS ANGELES, APARTMENT ASSOCIATION of SAN FERNANDO VALLEY/VENTURA, APARTMENT ASSOCIATION of CALIFORNIA SOUTHERN CITIES, FOOTHILL APARTMENT ASSOCIATION and MINORITY APARTMENT OWNERS ASSOCIATION ("plaintiffs") for Judgment on the Pleadings came on regularly for hearing on January 6 and 20, 2000, in Department 55 of the above entitled court; the Honorable Cesar Sarmiento, Judge presiding; plaintiffs appearing by counsel Trevor A. Grimm and Craig Mordoh of the CALIFORNIA APARTMENT LAW INFORMATION FOUNDATION and Defendant Sheriff of Los Angeles County, California ("defendant") appearing by counsel Nelson and Fulton through Henry Patrick Nelson.

Upon consideration of all evidence set forth and the papers submitted and the inferences reasonably deducible therefrom:

IT IS ORDERED, ADJUDGED AND DECREED that:

Judgment be entered for the plaintiffs and against the defendant, as follows:

1. A Peremptory Writ of Mandate issue from this Court compelled defendant and his agents and employees, and all persons acting under, in concert with or for him, to perform the ministerial duty, as required by law, to enforce valid writs of possession issued by State Courts in unlawful detainer actions notwithstanding the filing of a post-unlawful detainer judgment Bankruptcy petitioners by "evicted tenants," all in accordance with the provisions of *California Civil Code Section 715.050.*

2. A permanent injunction issue forthwith to compel defendant and his agents and employees, and all persons acting under, in concert with or for him, to perform the ministerial duty, as required by law, to enforce valid writs of possession issued by State Courts in unlawful detainer actions notwithstanding the filing of a post-unlawful detainer judgment Bankruptcy petitions by "evicted tenants," all in accordance with the provisions of *California Civil Code Section 715.050.*

3. That California Code of Civil Procedure Section 715.050 is declared constitutional and requires the enforcement by the County Sheriff of valid writs of possession resulting from unlawful detainer actions notwithstanding the filing of post-eviction-judgment Bankruptcy petitions by "evicted tenants."

3. No bond is required to be posted by plaintiffs and that Plaintiffs shall recover costs of suit, and that Plaintiffs' entitlement to recover attorneys' fees shall be determined by motion filed by plaintiffs.

DATED: 1-20, 2000

/s/ Cesar Sarmiento
Honorable Cesar Sarmiento
Judge Superior Court

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TO RESPONDENT, Sheriff of Los Angeles County, California:

Judgment having been entered in this action ordering that a Peremptory writ of Mandate in the form stated below be issued by this Court, therefore.

YOU ARE COMMANDED, on receipt of this Writ, to enforce valid writs of possession issued by State Courts in unlawful detainer actions notwithstanding the filing of a post-unlawful detainer judgment Bankruptcy petitions by "evicted tenants," all in accordance with the provisions of *California Civil Code Section 715.050.*

FURTHER, YOU ARE COMMANDED to make and file a return to this Writ within twenty (20) days of the date a copy of this Writ is served on you showing what you have done to comply with this Writ.

Dated: 1-20-2000

/s/ Illegible
Clerk

LET THE FOREGOING WRIT ISSUE.

Dated: 1-20-00

/s/ Cesar Sarmiento
Honorable Cesar Sarmiento
Judge of the Superior Court

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

BEN LEE, APARTMENT ASSOCIATION OF GREATER LOS ANGELES, a corporation; APARTMENT ASSOCIATION of SAN FERNANDO VALLEY/ VENTURA, a corporation; APARTMENT ASSOCIATION of CALIFORNIA SOUTHERN CITIES, a corporation; FOOTHILL APARTMENT ASSOCIATION, a corporation; MINORITY APARTMENT OWNERS ASSOCIATION, a corporation, Petitioners and Plaintiffs, vs. SHERMAN BLOCK, Sheriff of Los Angeles County, California, DOE 1 and DOE 2, Respondents and Defendants.	Case No. BC197745 ORDER (Filed Jan. 20, 2000) DATE: January 20, 2000 TIME: 8:30 AM DEPT. 55

The motion of plaintiffs BEN LEE, APARTMENT ASSOCIATION of GREATER LOS ANGELES, APARTMENT ASSOCIATION of SAN FERNANDO VALLEY/VENTURA, APARTMENT ASSOCIATION OF CALIFORNIA SOUTHERN CITIES, FOOTHILL APARTMENT ASSOCIATION and MINORITY APARTMENT OWNERS ASSOCIATION ("plaintiffs") for An Order in Accordance With the Decision of the Court of Appeal and for Judgment on the Pleadings came on regularly for hearing on January 6 and 20, 2000, in Department 55 of the above entitled court; the Honorable Cesar Sarmiento, Judge presiding; plaintiffs appearing by counsel Trevor A. Grimm and Craig Mordoh of the CALIFORNIA APARTMENT LAW INFORMATION FOUNDATION and Defendant Sheriff of Los Angeles County, California ("defendant") appearing by counsel Nelson and Fulton through Henry Patrick Nelson.

Upon consideration of all evidence set forth and the papers submitted and the inferences reasonably deducible therefrom, the Court makes the following determinations: Plaintiffs' Motion for Order and Motion for Judgment on the Pleadings is granted for the following reasons:

(1) On *July 29, 1999,* in a unanimous published decision, the California Court of Appeal held that "The order of dismissal and the order sustaining the Sheriff's demurrer are reversed, and the cause is remanded to the trial court with directions to (1) enter a new order overruling the Sheriff's demurrers to Lee's claims for declaratory and injunctive relief."

(2) *California Civil Code Section 715.050,* requiring defendant to enforce valid writs of possession, notwithstanding the filing of post-unlawful detainer judgment Bankruptcy petitions by "evicted tenants," is a constitutional exercise of the State's police power and its right to determine the nature and character of state property rights, and does not conflict with the United States Bankruptcy Code or other federal law;

(3) As recognized by the holding of the appellate court in this action, under California Law a tenant no longer has any legal or equitable right to possession of real property following the rendering of an adverse judgment against the tenant in an unlawful detainer action for possession of such real property and the issuing of a writ of possession by the Court directing the Sheriff or enforcing officer to turn over possession of such real property to the person legally entitled thereto. Therefore, the automatic stay provisions of the Bankruptcy Code do not apply to the recovery of real property by enforcement of a writ of possession issued by a State Court when tenants file post-unlawful detainer judgment petitions in Bankruptcy because:

(a) After an adverse State Court judgment in an unlawful detainer action for possession of real property, an "evicted tenant" has no legal or equitable possessory interest in the subject real property that can be protected in a Bankruptcy proceeding;

(b) Enforcement of a writ of possession issued by a State Court following a judgment for possession of real property in an unlawful detainer action is an action solely against the subject real property;

(c) Enforcement of a writ of possession issued by a State Court following a judgment for possession of real property in an unlawful detainer action is not an action against the "evicted tenant;" and

(d) Enforcement of a writ of possession issued by a State Court following a judgment for possession of real property in an unlawful detainer action is not an action against any possessory interest in such real property owned by an "evicted tenant" since any prior such possessory interest in the subject real property would have been found forfeit as a part of any State Court judgment for possession of such real property.

ACCORDINGLY, IT IS ORDERED that defendant's demurrer, sustained without leave to amend, is hereby overruled and the order of dismissal is reversed, as to plaintiffs' claims for declaratory and injunctive relief. Plaintiffs' Fourth Cause of Action for Damages is dismissed without prejudice.

FURTHER, IT IS ORDERED that the Motion for Judgment on the Pleadings is granted in favor of plaintiffs and against defendant.

FURTHER, IT IS ORDERED that a Peremptory Writ of Mandate issue forthwith to compel defendant and his agents and employees, and all persons acting under, in concert with or for him, to perform the ministerial duty, as required by law, to enforce valid writs of possession issued by State Courts in unlawful detainer actions notwithstanding the filing of a post-unlawful detainer judgment Bankruptcy petitions by "evicted tenants," all in accordance with the provisions of *California Civil Code Section 715.050.*

FURTHER, IT IS ORDERED that a permanent injunction issue forthwith to compel defendant and his agents and employees, and all persons acting under, in concert with or for him, to perform the ministerial duty, as required by law, to enforce valid writs of possession issued by State Courts in unlawful detainer actions notwithstanding the filing of a post-unlawful detainer judgment Bankruptcy petitions by "evicted tenants," all in accordance with the provisions of *California Civil Code Section 715.050.*

FURTHER, IT IS DECLARED that California Code of Civil Procedure Section 715.050 is constitutional and requires the enforcement by the County Sheriff of valid writs of possession resulting from unlawful detainer actions notwithstanding the filing of post-eviction-judgment Bankruptcy petitions by "evicted tenants."

FURTHER IT IS ORDERED that no bond is required to be posted by plaintiffs and that Plaintiffs shall recover costs of suit, and that Plaintiffs' entitlement to recover attorneys' fees shall be determined by motion filed by plaintiffs.

DATED: 1-20, 2000

/s/ Cesar Sarmiento
Honorable Cesar Sarmiento
Judge Superior Court